

# STATE OF NEBRASKA

## DEPARTMENT OF INSURANCE

**L. Tim Wagner**

*Director*



**Dave Heineman**  
*Governor*

### NOTICE

To: Property and Casualty Insurers

From: L. Tim Wagner

Date: July 5, 2005

Re: Settlements on an Actual Cash Value basis and Depreciation

Recently, the Nebraska Supreme Court in *Olson v. LeMars Mutual Insurance Company*, 269 Neb. 800, 696 N.W.2d 453 held that under an actual cash value policy which does not expressly provide otherwise, an insurer may not deduct depreciation from the cost of repairing partial damage to insured property where the actual cash value of the property, as repaired, does not exceed its actual cash value at the time of the loss.

Insurers which do not include as part of their policy explicit terms permitting the deduction of depreciation from claims settlements made on an actual cash value basis are hereby advised that deductions for depreciation are not permitted under Nebraska law as set forth in *Olson v. LeMars Mutual Insurance Company*, until such time as their policy language is revised accordingly.

Further, such insurers are advised that in the event of an investigation of insurer claims settlement practices, either as part of a formal market conduct examination, or as part of an investigation conducted at the request of a specific consumer, the Department will look to verify that claims settled after the date of this Nebraska Supreme Court decision will be handled in conformity with policy language and Nebraska law.

The Department will allow insurance carriers to endorse their policies to include language to explain in more detail the deduction of depreciation for losses made on an actual cash value basis. Please remember to submit this filing to the Department in compliance with the rate and form filing requirements. As a restriction of coverage, it could only be done on new business and on renewal contracts. We would encourage companies that decide to include an endorsement on their policies to also include a policyholder notice advising insureds of the change in contract provisions in light of the Nebraska Supreme Court Decision.